IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1412 OF 1997

K.M.Mishra,
son of late Shri Harishchandra
Mishra, resident of A-37/602,
Unique Palace Shanti Park,
Meera Road, Dist.Thane. ..PETITIONER.

VERSUS

1. Central Bank of India,
through its Chairman
and Managing Director,
Head Office, Chandramukhi,
Nariman Point,
Mumbai-400 021.

2. Shri J.Bhattacharjee,
General Manager (Personnel),
through Central Bank of India,
Head Office Chandramukhi,
Nariman Point,
Mumbai-400 021.

3. Shri R.R.Sharma,
General Manager (Rajbhasha),
through Central Bank of India,
Head Office Chandramukhi,
Nariman Point,
Mumbai-400 021.

4. S.C.Unhelkar,
Chief Manager (Systems and
Procedure), Central Bank of
India, Head Officer,
Nariman Point,
Mumbai-400 021.

5. Shri R.K.Uppadhyay,
Chief Manager (Rajbhasha),
Central Bank of India,
Head Office, Chandramukhi,
Nariman Point,
Mumbai-400 021. ..RESPONDENTS.

....

Mrs.N.V.Masurkar, Advocate for the Petitioner.

Mr.J.P.Cama, Senior Counsel i/b. K.P.Anilkumar, Advocate for the Respondent.

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CORAM : **DR.S.RADHAKRISHNAN AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **NOVEMBER 24, 2006.**

JUDGMENT: (PER SMT.V.K.TAHILRAMANI,J.)

1. In this Petition filed under Article 226 of the Constitution of India, the petitioner has challenged the promotion granted to respondent No.5 to the post of Chief Manager Rajbhasha (SMG Scale IV).

2. Admittedly, the petitioner himself underwent the selection process of promotion for the said post alongwith respondent No.5. The promotion had been challenged on the following main grounds : (i) that respondent No.5 did not possess the requisite qualification of Post-Graduate degree in Hindi with English as a subject at Degree level or Post-Graduate degree in Sanskrit with Hindi and English as subjects at Degree level; (ii) that respondent No.5 was

junior to the petitioner; (iii) that, respondent No.4 was not competent to write the APR of the petitioner for the years 1994-1995, 1995-1996 and 1996-1997 and that respondent No.4 allegedly down-graded the petitioner from "excellent" to "good"; and (iv) that the petitioner was officiating in the higher post for about three years and therefore he was more meritorious than respondent No.5.

3. The petitioner had initially joined respondent-Bank as Hindi Translator in the Clerical Cadre in 1973. He came to be promoted as Hindi Officer w.e.f. 1.12.1976. The petitioner was granted Scale II in 1984 and Scale III w.e.f. 1.4.1991. On or about 1.2.1993 the petitioner was given charge of the post of Chief Manager on retirement of Shri.R.V.Tiwari, AGM. The petitioner claimed that he officiated in the higher post and completed five years service in Scale III on 1.4.1996. Respondent No.4 took over the charge as Rajbhasha Pramukh on 9.8.1996.

4. By letter dated 9.5.1997 the petitioner was informed by the Chief Manager to appear for an

interview for promotion to Scale IV (1997) Rajbhasha. The interviews were held on 19.5.1997 and respondent No.5 came to be selected. The petitioner made representation by way of an Appeal on or about 17.6.1997. It is the case of the petitioner that inspite of his representation the same was not decided till he approached this Court. On 14.10.1997 this Court directed the respondent-Bank to decide the appeal of the petitioner by constituting a review committee. The Review Committee rejected the appeal by its order dated 15.12.1997 and consequently the Petition came to be amended so as to challenge the Appellate order as well.

5. As per the Promotion Policy of the respondent-Bank, for promotions from Middle Management Grade (Scale III) to Senior Management Grade (Scale IV), an officer should have completed a minimum of five years of service in MMG (Scale III). There is no dispute that the petitioner and respondent No.5 both fulfilled the said qualification. As far as the educational qualifications are concerned, the requirements are as under :

"2. Educational qualifications :

. Second class Master’s Degree in Hindi with English as an elective subject at Bachelor’s Degree level;

OR

. Second class Master’s degree in Sanskrit/English/Economics/Commerce with any recognised public examination in Hindi equivalent to graduation/Hindi as an elective subject at graduation level;

OR

. Second class Master’s Degree in Economics/Commerce in Hindi medium and with English as an elective subject at Bachelor’s Degree level."

. The petitioner possesses Master’s Degree with Hindi as a Special subject and English as one of the subjects at Bachelor’s level; whereas respondent No.5 possesses M.Com. Degree with Hindi as a Special subject with English as one of the subjects at Graduate level. As both of them possess the requisite educational qualification, it cannot be said that the petitioner has better educational qualification.

6. On the point of officiation by the petitioner in a higher post, the respondent-Bank

in its affidavit has stated that the petitioner has officiated in the higher post for a period of about one year till 8.3.1994 on stopgap arrangement. Thereafter, respondent No.4 was entrusted with the additional responsibility of Hindi Cell. Officiating for a period of a year or even more cannot make the petitioner more qualified, as the promotion to the said post is based entirely on performance and potential from amongst the officers who had achieved the eligibility level. For educational qualification no weightage is given for promotions beyond the MMG Scale III. The Promotion Policy for the Specialist Cadre has been designed on the basis of merit from amongst the eligible officers and said post is undoubtedly from a Specialist Cadre.

7. It is the case of the petitioner that, respondent No.4 was not competent to write the APR of the petitioner for the years 1994-1995, 1995-1996 and 1996-1997 and that respondent No.4 allegedly down-graded the petitioner from "excellent" to "good". For the year 1994-1995 Shri.Arjun Bhaya and the then General Manager of the Hindi Cell assessed the petitioner’s work and

gave his ratings. For the next two years the assessment was done by respondent No.4 and Shri.R.R.Sharma General Manager, Hindi Cell acted as a Reviewing Authority. For the year 1995-1996 the petitioner failed to give his self-appraisal form in time i.e. before the retirement of Shri.Arjun Bhaya. The respondent-Bank has placed before us the self-appraisal form filled-in by the petitioner in each year, from which it is seen that the petitioner has submitted the self-appraisal forms for these three years belatedly. Thus, by the time the petitioner submitted his self-appraisal form for the year 1995-1996, Mr.Bhaya had already retired and hence it was not possible for Mr.Bhaya to assess the petitioner's work. Though, for the last two years it was respondent No.4 who acted as a Reporting Officer, the Reviewing Authority was Shri.R.R.Sharma against whom the petitioner has no grievance.

8. It is also alleged by the petitioner that respondent No.4 down graded him from "excellent" to "good" and that respondent No.4 was not competent to hold the charge of Hindi Cell as he

was from the main stream. These allegations do not impress us. It is within the managerial domain of the respondent-Bank to reshuffle the Senior Officers and respondent No.4 was not the sole authority to finalise the ratings of the petitioner. Respondent No.3 i.e. the General Manager (Rajbhasha) has acted as a Reviewing Authority and, therefore, the contention of the petitioner that he was down graded is unfounded.

9. There is no doubt that in the performance of last three years 1994-1995, 1995-1996 and 1996-1997 respondent No.5 was rated as "very good" for all the three years, whereas the petitioner was rated as "good" for two years and "very good" for one year. The performance ratings and the marks obtained by the petitioner and respondent No.5 are as under :

PROMOTION PROCESS FROM SC.III TO IV (RAJBHASHA)

Sr. No.	Name	Present Placement	Performance Appraisal Ratings 1994-95	1995-96	1996-97
1.	**2.**	**3.**	**4.**	**5.**	**6.**
1.	Shri.K.M.Mishra (Petitioner)	Rajbhasha Vibhag, Central Office.	Very Good 32	Good 24	Good 24

2.	Shri.R.K.Upadhaya (Respondent No.5)	Z.O.New Delhi.	Very Good 32	Very Good 32	Very Good 32

Contd...

Sr. No.	Average Marks	Interview Rating	Total Marks
	7.	**8.**	**9.**
1.	26.6	A 30	56.6
2.	32.0	A 30	62.0

. In addition to the performance appraisal in the interview ratings, both the petitioner and respondent No.5 obtained 30 marks. In the final score respondent No.5 scored 62 out of 100 marks and the petitioner scored 56.6 out of 100 marks, and therefore it was respondent No.5 who was found to be more meritorious.

10. The petitioner relied upon the decisions in the case of **Union of India & Anr. Vs. Yogendra Singh 1996(1)SLR (S.C.) Page-132**; and **Madhya Pradesh Electricity Board Vs. S.S.Modh & Ors. AIR 1997 S.C.3464**, in support of the contention that respondent No.5 was not eligible for being considered for promotion to the said post. The said decisions would be of no help to the

petitioner. As noted earlier the petitioner and respondent No.5 both possess the requisite qualifications and it cannot be accepted that the petitioner holds better qualification than respondent No.5. In the instant case, the promotion is not on the principle of "Seniority-Cum-Merit" and, therefore, even if the petitioner is senior, that by itself cannot be a ground to challenge the promotion granted to respondent No.5. As per the respondent-Bank's Promotion Policy the promotion to Scale IV is on the basis of "Merit-Cum-Seniority", which necessarily implies that amongst the eligible officers, merit is to be taken into consideration and the more meritorious officer is appointed to the higher post.

11. The petitioner had participated in the selection process without any protest. It is well recognised in law that once an officer participates in the selection process for promotion without any protest, he cannot be allowed to challenge the validity of the selection process on his failure to qualify for promotion. We may in this regard refer to the decision in the

case of **Suneeta Aggarwal Vs. State of Haryana 2000 I CLR (S.C.)825**, as has been rightly relied upon by the respondent-Bank.

12. In terms of the overall performance i.e. appraisal for three years and the interview ratings, it is respondent No.5 who was found to be more meritorious and as per the Promotion Policy of the respondent-Bank there is no extra weightage for officiation. The respondent-Bank has clarified in this regard that the petitioner was called upon to officiate solely because he was at Mumbai and if respondent No.5 was available at Mumbai, instead of the petitioner respondent No.5 would have got the order for officiation. Hence, on all counts the petitioner's challenge to the promotion of respondent No.5 is devoid of any merit.

. In the premises, the Petition fails and the same is hereby dismissed. Rule stands discharged.

[DR.S.RADHAKRISHNAN,J.]

[SMT.V.K.TAHILRAMANI,J.]